

# LOS ANGELES COUNTY DISTRICT ATTORNEY CHARGE EVALUATION WORKSHEET

Page 1 of 7

<input checked="" type="checkbox"/> FELONY  <input type="checkbox"/> MISDEMEANOR	AGENCY NAME LASD - INTERNAL CRIMINAL AGENCY FILE NO. (DR OR URN) 912-00113-2003-441	DA CASE NO. 33343956 DA OFFICE CODE J.S.I.D. #12-0212R	DATE 05/23/2013 VICTIM ASSISTANCE REFERRAL <input type="checkbox"/> YES - NOTIFY VWAP <input checked="" type="checkbox"/> NO
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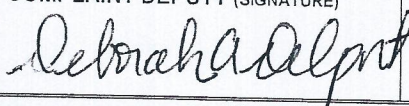
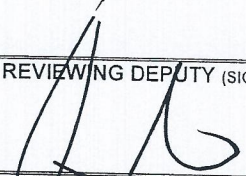
  

SUSP NO.	SUSPECT	CODE	SECTION	OFFENSE DATE	REASON CODE
1	NAME (LAST, FIRST MIDDLE)) SHAPIRO, ANTHONY	PC	118(A)	07/27/2011	B
		PC	118.1	06/25/2011	B
		PC	118.1	07/09/2011	B
	DOB:      SEX (M/F): M      BOOKING NO.:      VIP -- Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>				
Gang Member Name of Gang:      Victim Gang Member Name of Gang:					
Victim Name:      Victim DOB:					
2	NAME (LAST, FIRST MIDDLE))				
	DOB:      SEX (M/F):      BOOKING NO.:      VIP -- Yes <input type="checkbox"/> No <input type="checkbox"/>				
	Gang Member Name of Gang:      Victim Gang Member Name of Gang:				
	Victim Name:      Victim DOB:				
3	NAME (LAST, FIRST MIDDLE))				
	DOB:      SEX (M/F):      BOOKING NO.:      VIP -- Yes <input type="checkbox"/> No <input type="checkbox"/>				
	Gang Member Name of Gang:      Victim Gang Member Name of Gang:				
	Victim Name:      Victim DOB:				

Comments  
 SEE ATTACHED.

COMPLAINT DEPUTY (print) DEBORAH A. DELPORT/ap	COMPLAINT DEPUTY (SIGNATURE) 	STATE BAR NO. 163626	REVIEWING DEPUTY (SIGNATURE) 
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I have conveyed all relevant information to the above-named Deputy District Attorney to be used in consideration of a filing decision.

FILING OFFICER (PRINT): SERGEANT RON JESTER

FILING OFFICER (SIGNATURE): Mailed 6/7/13

SERIAL #: 273406

<b>DEPARTMENT OF JUSTICE REASON CODES (FORM 8715)</b>  A. Lack of Corpus B. Lack of Sufficient Evidence C. Inadmissible Search/Seizure	D. Victim Unavailable/Declines To Testify E. Witness Unavailable/Declines to Testify F. Combined with Other Counts/Cases G. Interest of Justice	H. Other (indicate the reason in Comments section) I. Referred to Non-California Jurisdiction J. Deferred for Revocation of Parole K. Further Investigation	L. Prosecutor Prefiling Deferral <b>DISTRICT ATTORNEY'S REASON CODES</b> M. Probation Violation filed in lieu of N. Referred to City Attorney for Misdemeanor Consideration
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The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the allegation that Los Angeles County Sheriff's Department Deputy Anthony Shapiro committed the crimes of perjury and filing a false police report in violation of Penal Code sections 118 and 118.1. For the reasons set forth below, this office declines to initiate criminal proceedings.

## **FACTUAL ANALYSIS**

### JUNE 25, 2011 ARREST

On June 25, 2011, Deputy Sheriff Anthony Shapiro and fellow members of the Taskforce for Regional Autotheft Prevention (TRAP) team were conducting a bait car operation near the City of Glendora.<sup>1</sup> A bait car is a vehicle used by law enforcement to capture car thieves. The vehicle is modified with multiple video surveillance cameras mounted to the interior and exterior of the car. A "kill switch" is installed in the vehicle allowing deputies to remotely disable the engine and lock all doors from the inside, preventing escape.

The operation was being videotaped by several camera crews for the television show "Bait Car."

At approximately 9:30 p.m., an undercover deputy sheriff parked the bait car on the street with the lights on and the engine running. Daniel Mezaponse and Jorge Ponce were approximately twenty feet away on the sidewalk, walking toward the bait car, when this occurred. The undercover deputy entered a second car being driven by another undercover deputy and left the scene. At that time, Mezaponse and Ponce were within several feet of the bait car. Ponce immediately entered the passenger door and Mezaponse the driver's door and drove away. Video cameras inside the bait car recorded Mezaponse and Ponce laughing, giving each other high fives and congratulating each other on their good luck. Mezaponse told Ponce to search the car. Ponce is seen leaning forward and looking around the floorboard and beneath the seats. He then turns around to look behind the seats and into the bed of the truck. He informs Mezaponse that there were "tools and shit" in the truck. After driving approximately a mile and half, TRAP shut down the bait car. Mezaponse and Ponce were detained and arrested for Vehicle Code Section 10851(a).

Shapiro filed a police report detailing the arrest. He wrote:

"We separated the suspects and I read them their Miranda Rights per shad 477. They both stated they understood their rights. Suspect Mezaponse elected not to talk to me."<sup>2</sup>

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<sup>1</sup> Shapiro has been with the Sheriff's Department over twenty years.

<sup>2</sup> A review of the video footage shows that Mezaponse was never read his Miranda rights. Immediately after Shapiro asked Mezaponse where he planned to take the bait car, Mezaponse asked for an attorney and said he intended to remain silent. Shapiro and several other detectives continued to speak with Mezaponse and showed him the bait car video footage, although they advised him that he did not have to talk to them.



Suspect Ponce stated he wanted to talk to me without an attorney because he wanted to cooperate. Under Miranda, suspect Ponce said they took the vehicle because they were going to steal [all] of the tools in the bed of the truck and then they would try to get rid of the truck." The police report was approved by Shapiro's supervisor on June 26, 2011.

The Sheriff's Department Miranda advisement is depicted on document SH-AD-477 (SHAD). It reads as follows:

1. You have the right to remain silent. Do you understand?
  2. Anything you say may be used against you in court. Do you understand?
  3. You have the right to an attorney during questioning. Do you understand?
  4. If you cannot afford an attorney, one will be appointed for you, before any questioning. Do you understand?
- (NOTE: If you desire an expressed waiver, ask a (yes) or (no) question such as, "Do you want to talk about what happened?")

On June 28, 2011, Ponce was charged in case KA094733 with one count of violating Vehicle Code Section 10851(a). He pled no contest and was placed on three years felony probation and sentenced to 90 days in county jail.

#### Videotaped Footage

Shapiro was wearing a microphone pack which recorded all of his conversations while the "Bait Car" camera crew videotaped the operation. A review of the complete unedited "Bait Car" television show audio/video footage revealed the following:

Shapiro approached Ponce who was seated in the back of a black and white police vehicle. He introduced himself and briefly talked about Mezaponse's bad attitude. The following conversation then took place:

Shapiro: You know your rights, huh?  
Ponce: Yeah.  
Shapiro: About an attorney and all that shit?  
Ponce: Yeah.

During subsequent questioning, Ponce admitted that he intended to sell the tools that were in the bed of the truck.

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Several detectives asked him questions about the car theft which Mezaponse answered while the video played. Mezaponse was also charged in case KA094733 with one count of violating Vehicle Code Section 10851(a). He pled no contest and was placed on three years felony probation and sentenced to 180 days in county jail.



### JULY 9, 2011 ARREST

On July 9, 2011, at approximately 7:30 p.m., Shapiro and members of TRAP conducted a bait car operation in the City of Compton. It was also being videotaped for the "Bait Car" television show.

The bait car was parked on the street by an undercover deputy with the engine running. Deputies observed Keenen Alex enter the bait car and drive away. Deputies followed Alex for approximately two miles before the vehicle's engine was shut down. Alex was detained and arrested for a violation of Vehicle Code section 10851(a). Alex's actions were captured on video taken by the bait car cameras.

Shapiro filed a police report detailing the facts of the arrest. In the narrative portion of the report, Shapiro stated, "I read him his Miranda Rights per shad 477. He stated he understood their [sic] rights. Suspect elected to talk to me." Alex told Shapiro that some friends asked him to drive the car to his house because they had too much to drink. When Shapiro advised Alex that he got caught in a sting, Alex admitted that he took the car because he was tired of walking.

On July 12, 2011, Keenen Alex was charged in felony complaint number TA118970 with one count of violating Vehicle Code Section 10851(a). On July 27, 2011, Shapiro testified at Alex's preliminary hearing. On direct examination, Shapiro was asked the following questions and provided the following answers:

- Q: And did you read him (Alex) his Miranda rights at that time?  
A: Yes, I did.  
Q: And how did you do that?  
A: I read it from a card in my wallet – in my notebook.  
Q: And did you – after you read them to him, did the defendant state he understood each right that you read him?  
A: Yes.  
Q: And did he agree to speak with you at that location after you read him his rights?  
A: Yes.

Shapiro also testified that he wrote the report on July 10, 2011. At the conclusion of the preliminary hearing, Alex was held to answer on the charge. Alex's case was eventually dismissed.

### Videotaped Footage

A review of the unedited "Bait Car" television show video/audio footage revealed the following:



After Alex was detained, Shapiro introduced himself as the lead detective. He asked Alex about the car. He denied stealing it. After several minutes, the following conversation took place:

Shapiro: You know your rights, right? You know all that stuff.  
Alex: Yeah, yeah.  
Shapiro: You watch tv, you know your rights and all that.  
Alex: Yeah, yeah.  
Shapiro: I'm gonna ask you some questions, okay?  
Alex: No problem. No problem.

Shapiro then advised Alex of the fact that he had been caught in a bait car sting. Alex eventually admitted to taking the car because he was tired after walking for a long distance.

## LEGAL ANALYSIS

To prove the crime of Perjury in violation of Penal Code §118, the People must establish that:

1. The defendant took an oath to testify truthfully before a competent tribunal;
2. When the defendant testified, he or she willfully stated that the information was true even though he or she knew it was false;
3. **The information was material;**
4. The defendant knew he or she was making the statement under penalty of perjury; and
5. When the defendant made the false statement, he or she intended to testify falsely while under penalty of perjury.

"Every peace officer who files any report with the agency which employs him or her regarding the commission of any crime or any investigation of any crime, if he or she knowingly and intentionally makes any statement regarding any material matter in the report which the officer knows to be false . . . is guilty of filing a false report." Penal Code section 118.1.

## CONCLUSION

The videotaped evidence establishes that Detective Anthony Shapiro did not read Ponce and Alex their full Miranda rights. In both incidents, Shapiro authored a police report within one day of the arrest when the events were still fresh in his mind. In addition, the paragraphs that contained the Miranda warnings in both reports, also contained facts specific to each arrest. Similarly, Shapiro's testimony at Alex's preliminary hearing took place only 18 days after the arrest. It is unlikely that the false statements and testimony regarding the Miranda issue were due to Shapiro's failure to recall the events accurately.



The evidence shows that the false reports and testimony were done willfully, knowingly and intentionally.

There are no reported cases interpreting the meaning of the term "material" as used in Penal Code §118.1. However, "material" is defined in closely related Penal Code §118. Information is material "if it is probable that the information would influence the outcome of the proceedings, but it does not need to actually have an influence on the proceedings." (CALCRIM No. 2640.) For purposes of this analysis, the same definition of "material" as it is defined for perjury will be applied to the charge of filing a false report. Accordingly, the issue becomes whether it is probable that the false statements contained in Shapiro's police reports regarding the Miranda warnings would have influenced the outcome of Ponce's and Alex's arrests and whether his false testimony would have influenced the outcome of Alex's preliminary hearing.

Although in the separate incidents Ponce and Alex were never properly Mirandized by Shapiro, they did make the admissions attributed to them in Shapiro's police report. It is reasonable to conclude that Shapiro falsely asserted that Ponce and Alex were Mirandized "per shad 477" so that their incriminating statements would be considered. Nonetheless, if the admissions were excluded, there was still probable cause to detain, arrest and charge Alex and Ponce for a violation of Vehicle Code section 10851(a). In the alternative, there was sufficient credible evidence to charge Ponce with receiving stolen property in violation of Penal Code section 496(a).

Videotaped footage depicts Ponce watching the undercover deputy as he exited the bait car and left it unattended. Within seconds he and Mezaponse were inside the vehicle and driving away from the scene. It is evident that they did not have permission to take the car. Video cameras mounted inside the car captured Ponce and Mezaponse celebrating their good fortune and discussing where to take the car. Ponce is seen searching the car and informs Mezaponse that there were tools present. Numerous deputies observed Ponce enter the car with Mezaponse as he drove away. The videotaped footage and deputy observations alone would have supplied enough probable cause to detain and arrest Ponce. In addition, it provided sufficient evidence to warrant the filing of charges without taking Ponce's statement to Shapiro into consideration. Although Ponce was not the driver, his statements and actions once inside the bait car showed dominion and control over the truck and the property within.

Similarly, Alex stole the bait car moments after it was left unattended by an undercover deputy. Video cameras captured him entering and driving the bait vehicle away without permission while deputies observed his actions. The videotaped footage and observations by the deputies provided sufficient probable cause to detain and arrest Alex and to subsequently charge him with the crime of unlawful taking of the vehicle without taking his statement into account.



Under these circumstances, the People would be unable to prove beyond a reasonable doubt that it was "probable" that the inclusion of the false statements in the police reports influenced "the outcome of the proceedings." As a result, there is insufficient evidence to establish that the false statements were "material" within the meaning of Penal Code section 118.1.

Using the same analysis regarding the crime of filing a false police report, there was sufficient evidence presented at the preliminary hearing for the magistrate to hold Alex to answer without relying on the false testimony. It is not "probable" that the false testimony influenced "the outcome of the proceedings." We conclude that it cannot be proven beyond a reasonable doubt that the false testimony was material within the meaning of Penal Code section 118.

Based on the foregoing evaluation, there is insufficient evidence to prove the crimes of perjury or filing a false police report beyond a reasonable doubt. Therefore, we are closing our file and will take no further action on this matter.